

2011 DRAFTING REQUEST

Bill

Received: **09/09/2010**

Received By: **jkuesel**

Wanted: **As time permits**

Companion to LRB:

For: **Mark Pocan (608) 266-8570**

By/Representing: **Melanie Conklin**

May Contact:

Drafter: **jkuesel**

Subject: **State Finance - claims agnst st
Criminal Law - miscellaneous
Correctional System - misc
Administrative Law
Tax, Individual - income**

Addl. Drafters: **phurley
mshovers**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pocan@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Treatment of Wrongfully Convicted Persons

Instructions:

Per attached E mail, 7/28/10.

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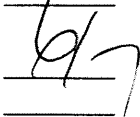
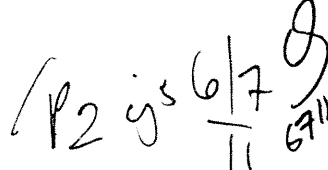

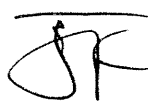
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**WISCONSIN
INNOCENCE PROJECT**
University of Wisconsin Law School

RESTORING INNOCENCE

The Need for Wisconsin to Adequately Compensate Wrongfully Convicted Individuals

A Report of the Wisconsin Innocence Project (Abbreviated Version)

Sarah Anderson, Mike Atkins, Crystal Banse, Kasey Deiss,
Adam Deitch, Keith Findley, Sarah Henery, Chase Horne,
Karne Hukee, Kristin Shimabuku, Claire Taylor, Amy Vanden Hogen

GROUND S FOR RECOMMENDATIONS

Most wrongfully convicted individuals serve decades-long prison sentences and face great hardships upon release. Apart from the horrors of prison life, the wrongfully convicted have few resources to draw upon when set free, and their families have often incurred enormous attorneys' fees related to their cases. While in prison, they miss out on educational opportunities, job training, and career advancement opportunities.

To provide adequate compensation, a statutory scheme must realistically account for these losses. Wisconsin needs to reform its statute to adequately restore innocence for the wrongly convicted and once again become a leader in compensating the wrongfully convicted.

This report addresses why Wisconsin Statute § 775.05 does not adequately address the many legitimate needs of the wrongly convicted and proposes improvements to the current statute.

SUMMARY OF RECOMMENDATIONS

1. Increase in maximum compensation

- Wisconsin's current statutory maximum for compensation—must be increased to at least the federal norm of \$50,000 per year, with no cap on the total award.
- The compensation amount must be indexed to inflation in order to reflect fluctuations in the economy.
- Wisconsin must follow the lead of other states and recognize that these compensation awards are not income and should not be taxed as such.

2. Reimbursement for attorney and court fees

- Wisconsin's compensation statute must be clarified¹ to ensure that individuals who are awarded compensation are additionally entitled to reimbursement for *all* reasonable attorney fees and court costs associated with the individual's defense, post-conviction, and compensation proceedings.
- Wisconsin should also reimburse exonerees for *all* other costs incurred related to the defense.² These fees include, but are not limited to, the court costs associated with the trial and any postconviction relief, work release fees, any penalty or jail surcharges assessed by the court, public defender fees, fees paid to the victim-witness compensation fund, fees paid for court-ordered restitution, fees assessed under the crime law and drug law enforcement surcharge, and fees paid for DNA analysis.³

¹ The statute currently states, "Compensation awarded by the claims board shall include any amount to which the board finds the petitioner is entitled for attorney fees, costs and disbursements." WIS. STAT. § 775.03(4).

² It should be noted that authorizing the Claims Board to award attorney's fees and other costs associated with the proceeding will not drain the state's resources. The vast majority of exonerees initially received representation by a state public defender due to their indigence; thus, reimbursement for attorney's fees will be minimal.

³ Wis. Stat. Chapter 814 sets out the court costs and fees that can be levied against defendants. The Wisconsin Circuit Court has created a useful guide to the statutory fines, available at

Does any statute currently create a refund procedure? (May need treatment)

Securing the return of these fees paid to the state is notoriously difficult. There is no statutorily defined process and, as a result, the wrongfully convicted individual must not only calculate all of the fees paid, but must individually petition each institutional entity for a refund.

3. Department of Corrections Assistance with Social Services

- 15H? →
- PSH? →
- Wisconsin provides more support to guilty individuals after release than to exonerated wrongly convicted individuals. Wisconsin should follow the lead of other states and the national trend toward offering the wrongly convicted healthcare and counseling services, assistance finding housing, and educational and vocational support, to ensure that they have been provided ample opportunities for successful reintegration into society.
 - First, the exoneree's county of residence should provide an up-to-date list or directory of resources in the community that are likely to be available the day he or she leaves prison. This list may include information about temporary housing and emergency shelters, food banks, healthcare services, etc. Second, the county should provide a case manager to the exoneree to identify and administer the services of the county. The case manager should provide one-on-one assistance to help the exoneree obtain food and clothing, secure long-term housing, and access job training and job placement services. The case manager should assist with applying for any benefit programs the individual may be eligible for, such as FoodShare and BadgerCare. Third, if needed, the case manager should connect the individual to community or faith-based organizations that provide mentoring opportunities and other supports.
 - Offering these services will not overburden the state because the number of individuals who would qualify for these additional services will be small, and because the infrastructure already exists to provide these services.

4. Criminal Record Expungement and Removal from CCAP

- PSH? →
- PSH? →
- Individuals who have their conviction reversed or vacated on grounds not inconsistent with innocence should have their criminal record related to the wrongful conviction automatically removed from electronic online court records such as the Consolidated Court Automation Programs (CCAP) at the time of the reversal of conviction.
 - Currently, legislation is pending in the Wisconsin State Assembly that prevents the entry of a criminal charge into CCAP until there is a finding of guilt in a criminal matter.⁴ Automatic CCAP removal for an exoneree is consistent with but much narrower than the proposed legislation.
 - Additionally, upon a successful petition for compensation, or on a motion to the circuit court upon dismissal of the charges, an individual should be entitled to expungement of his or her record related to the wrongful conviction.

<http://www.wicourts.gov/about/filing/docs/fees.pdf>. The table lists the relevant statute for each potential fee, notes the percentage or amount that can be assessed, and describes the circumstances in which the fee applies.

⁴ Assem. B, 340 (Wis. 2009)

- collaborate →
- The authority to issue an expungement order should be included within the compensation proceedings, so that when the individual is awarded compensation through the state's process, he does not have to undergo an additional step in seeking to expunge the record.
 - Should exonerated individuals choose not to seek compensation under Wis. Stat. § 775.05, they should still be eligible for expungement by motion to the circuit court.

✓ 5. **Preponderance of the Evidence Burden of Proof for Claimants**

- JTK →
- Current law should be revised so that wrongfully convicted individuals only have to prove their innocence by a *preponderance of the evidence* like other claimants for damages in civil actions, rather than the currently statutorily prescribed higher burden of *clear and convincing evidence*.

JTK ✓ 6. **Claimants are not Barred from Seeking Compensation if they Contributed to their Conviction**

-
- Repeal the current statutory provision barring an individual from receiving compensation if he or she contributed in any way to his or her conviction, so that innocent individuals who were pressured to confess or plead guilty are made eligible for compensation.

7. **Public Defender assistance for Compensation Claims**

- BH →
- Wrongfully convicted individuals should be guaranteed the assistance of a public defender to navigate the compensation process if they are not already represented by private counsel. This legal assistance should be available to the wrongfully convicted individual immediately after the individual's conviction is vacated or reversed, assuming the individual is not already privately represented.

✓ 8. **Compensation Claims should be heard by the Division of Hearings and Appeals**

- JTK
- Claims for compensation should be heard and decided before an Administrative Law Judge (ALJ) of the Department of Administration- Division of Hearings and Appeals, just as cases arising under the Department of Justice's Crime Victim Compensation Program are heard. (See Wis. Stat. § 949.11).
 - The Claims Board should not have the authority to delay sending claims to the DHA when another suit against the state, county, or municipality, is pending.⁵ Instead, if a subsequent civil judgment is obtained, the state can be permitted to offset or recoup any compensation awarded through DHA, against the civil judgment. This provision renders a delay unnecessary.
 - collaborate →
 - JTK ✓
→ • The ALJ should determine whether the claimant has proved his or her innocence by a preponderance of the evidence, and the amount of compensation he or she should be awarded. The ALJ should then inform the Claims Board of the claimant's ultimate award, which will be responsible for the disbursement of the award.

9. **Transitional Financial Assistance**

PJH? →

- Wisconsin should provide individuals who are more likely than not innocent with a monetary award even before they petition the Claims Board for compensation so that they can receive necessary immediate assistance upon their release from custody after a reversal of conviction.

→

- These individuals should be awarded a reasonable transitional assistance financial grant within ten business days of the order of reversal, the amount of which would then be deducted from a compensation award later received.

PJH? →

- All individuals whose convictions are reversed or vacated on grounds not inconsistent with innocence should also immediately receive all services provided to parolees and people on Extended Supervision such as counseling, healthcare, and housing assistance. In addition, the law should provide that, upon reversal of conviction, all fines, fees, costs, and surcharges imposed as a result of the conviction should be automatically and promptly returned to the defendants.

PJH? →

- As an additional intermediate measure, Wisconsin's statute should provide transitional assistance to wrongfully convicted individuals at the time of reversal. If the court were to find, at the time the conviction was vacated, that it is more likely than not that the defendant is innocent, or if the state were to stipulate to an individual's innocence, then the individual should promptly receive monetary compensation. At this intermediate stage, the court would make the determination, and then issue the interim transitional grant *within ten business days*. It is important that since this is a discretionary finding by the judge, with little fact-finding involved, the resulting decision to grant or withhold immediate monetary compensation should not enter into the later decision to award or deny full compensation. The final compensation amount, once awarded, can be offset by the transitional assistance received.

collaborate



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INTRODUCTION

In 2006, David Sanders was wrongfully convicted of sexually assaulting a child. Sanders, a former Franciscan brother, was working as a teacher when police arrested him based on a mistaken identification. A victim of a childhood sexual assault identified Sanders from a photo lineup as the "Brother David" who had molested him 20 years prior.

Sanders spent seven months in prison before authorities identified the real perpetrator and released Sanders. He found himself stranded in a strange city with no money and no place to stay. While in prison, he lost nearly \$40,000 in earnings, while interest on his debts accumulated. After his release, Sanders tried to piece his life back together. He managed to regain his teaching position, but his previously clean credit was destroyed. He was months behind in rent, and only his good relations with his landlord kept him from eviction.

In August 2007, Sanders applied for compensation under Wisconsin Statute § 775.05. Upon learning of Sanders's claim, Milwaukee District Attorney John Chisholm said, "If there's \$100,000 available for him, if there's \$1 million that's available for him, God bless him, he should have it." However, the compensation statute limited Sanders to requesting only \$23,240, broken down into \$5,000 for time served (the maximum allowed for each year of wrongful incarceration), and \$18,240 for legal fees. The Claims Board did not hear Sanders's claim until January 24, 2008, nearly six months after he filed it. At the hearing, the Board found clear and convincing proof of Sanders's innocence and granted him \$23,240. Although Sanders was glad to eventually receive the compensation, he still had to declare bankruptcy because of the ordeal.

Sanders is not alone. In 2001, Evan Zimmerman was wrongfully convicted of first-degree intentional homicide and spent over three years in prison before the prosecutor dismissed all charges against him. Despite his former career as a police officer, Zimmerman faced substantial hurdles when searching for employment. And when Zimmerman's arrest appeared on a background check for a janitorial job, he was told that "he must have done something wrong to get arrested in the first place." Zimmerman died in 2007 without ever receiving any compensation from the state.

Most recently, Robert Lee Stinson was exonerated after spending 23 years in prison for a murder he did not commit. Sadly, Stinson was released without a public support system, little work experience, limited monetary funds, and a 23-year employment gap he has to explain to future employers. At most, under Wisconsin's current law, Stinson may recover \$25,000 for wrongfully spending 23 years in prison.

Wrongfully convicted individuals like David Sanders, Evan Zimmerman, and Robert Lee Stinson deserve more generous and timely compensation packages than Wisconsin currently offers. Even though Sanders spent only seven months behind bars, he left prison facing severe economic hardship. Most wrongfully convicted individuals serve much longer sentences and face even more hardships upon release. Apart from the horrors of prison life, the wrongfully convicted have few resources to draw upon when set free, and their families have often incurred enormous attorneys' fees related to their cases. While in prison, they miss out on educational opportunities, job training, and career advancement opportunities.

To provide adequate compensation, a statutory scheme must realistically account for these losses. Wisconsin needs to reform its statute to adequately restore innocence for the wrongly convicted and once again become a leader in compensating the wrongfully convicted.

This report addresses why Wisconsin Statute § 775.05 does not adequately address the many legitimate needs of the wrongly convicted and proposes improvements to the current statute.

SUMMARY OF RECOMMENDATIONS

1. Wisconsin's current statutory maximum for compensation of \$5,000 per year of wrongful imprisonment, capped at a total of \$25,000, must be increased to *at least* \$50,000 per year, with no cap on the total award. This amount needs to be indexed to inflation in order to reflect fluctuations in the economy. Further, the compensation should be exempt from income taxes.
2. Current law should be clarified to ensure that individuals who are awarded compensation are additionally entitled to reimbursement for *all* reasonable attorney fees and court costs associated with the individual's defense, post-conviction, and compensation proceedings, as well as *all* other costs incurred related to the defense, such as DNA testing or private investigation.
3. Wrongfully convicted individuals who receive compensation should be provided a caseworker by their county of residence to identify and administer county services, including but not limited to counseling, healthcare services, education, and vocational assistance.
4. Individuals who have their conviction reversed or vacated on grounds not inconsistent with innocence should have their criminal record related to the wrongful conviction automatically removed from electronic online court records such (CCAP) at the time of the reversal of conviction. Additionally, upon a successful petition for compensation, or on a motion to the circuit court upon dismissal of the charges, an individual should be entitled to expungement of his or her record related to the wrongful conviction.
5. Current law should be revised so that wrongfully convicted individuals only have to prove their innocence by a *preponderance of the evidence* like other claimants for damages in civil actions, rather than the currently statutorily prescribed higher burden of *clear and convincing evidence*.
6. The statutory provision barring an individual from receiving compensation if he or she contributed in any way to his or her conviction should be repealed. An innocent individual should not be barred from recovery due to a confession or admission later found to be false or a guilty plea to a crime the claimant did not commit.
7. Wrongfully convicted individuals should be guaranteed the assistance of a public defender to navigate the compensation process if they are not already represented by private counsel.

8. Claims for compensation should be heard and decided before an Administrative Law Judge (ALJ) with the Division of Hearings and Appeals, just as cases arising under the Department of Justice's Crime Victim Compensation Program are heard, rather than the Claims Board. Decisions by an ALJ granting compensation should be promptly forwarded to the Claims Board for disbursement. In addition, compensation claims must be promptly heard and processed so that exonerees can receive compensation and begin to rebuild his or her life as soon as possible after release.
9. To provide transitional support, individuals whom the court finds more likely than not to be innocent at the time of reversal of their conviction should be awarded a reasonable transitional assistance financial grant within ten business days of the order of reversal, the amount of which would then be deducted from a compensation award later received.

PROPOSED REVISIONS TO WISCONSIN'S COMPENSATION STATUTE

- I. **To rectify the severe shortcomings of the current compensation system, Wisconsin should provide adequate compensation for the wrongly convicted by increasing compensation amounts, explicitly authorizing reimbursement for attorney fees and other fees related to the wrongful conviction, offering non-monetary compensation, and expunging the criminal records related to the wrongful conviction.**

- A. *Wisconsin must increase its yearly and total compensation amounts and index these to inflation.*

Wisconsin must substantially raise its yearly and total monetary compensation award. If Wisconsin does set a fixed amount, either yearly or as a cap, that amount should *at least* meet the federal norm of \$50,000 per year and must be indexed to inflation in order to reflect fluctuations in the economy. Further, Wisconsin must follow the lead of other states and recognize that these compensation awards are not income and should not be taxed as such.

Wisconsin's current statute provides the lowest annual monetary compensation amount in the nation (*See Appendix B*).¹ The current amount provided by statute—which has not been adjusted since 1980—provides only \$5,000 per year of incarceration, capped at a total of \$25,000.² This makes Wisconsin's *total* award cap half the amount that Congress recommends offering *per annum*.³

Developments in other states demonstrate the inadequacy of Wisconsin's monetary provisions. The state with the second lowest yearly provision, Louisiana, awards \$15,000 per year,⁴ three times the amount that Wisconsin awards. Other states provide even more generous

¹ 25 states, plus Washington, D.C. have statutes providing some form of compensation in place. The Innocence Project — Fix the System: Priority Issues: Exoneree Compensation, <http://www.innocenceproject.org/fix/Compensation.php> (last visited Sept. 24, 2008).

² WIS. STAT. § 775.03(4) (2007).

³ *See Appendix B.*

⁴ LA. REV. STAT. § 15:572.8 (2008).

amounts: New Jersey awards the wrongfully convicted up to \$20,000 per year,⁵ Ohio provides up to \$40,330,⁶ Vermont provides up to \$60,000,⁷ and Texas provides up to \$80,000, plus an annual annuity of \$80,000.⁸ Notably, the federal statute grants up to \$50,000 per year of incarceration, and up to \$100,000 per year spent on death row.⁹ Congress recommends that states should use the federal statute as a model for their compensation statutes.¹⁰

Not only is Wisconsin's rate of \$5,000 per year the lowest in the country, but its cap on total compensation of \$25,000 is the second lowest.¹¹ Some jurisdictions, including Alabama and Washington, D.C., have no cap at all.¹² Similarly, New York and West Virginia permit any award deemed fair and reasonable compensation.¹³ Caps in other states range from \$150,000 in Louisiana to \$2,000,000 in Florida.¹⁴ Wisconsin's cap is antiquated and does not reflect the lost income, investments, properties and opportunities, or the emotional hardships, suffered by the wrongly imprisoned.

Furthermore, recognizing that sentences vary and economic conditions fluctuate over time, other states have adopted a variable formula for calculating compensation. New Jersey grants a monetary stipend for each year of incarceration not to exceed the greater of twice the exoneree's yearly personal income prior to incarceration, or \$20,000.¹⁵ Utah, grants a stipend based upon the average non-agricultural income at the time of the prisoner's release.¹⁶ Alternatively, New York awards damages "in such sum of money as the court determine[s] will

⁵ See N.J. STAT. ANN. § 52:4C-1 (2008).

⁶ See OHIO REV. CODE ANN. § 2743.49 (2008).

⁷ See VT. CODE ANN. § 5574 (2008).

⁸ H.B. 1736, 81st Leg., Sess. 81-R (Tex. 2009).

⁹ There is also no maximum cap on compensation. See 28 U.S.C.S. § 2513 (2008).

¹⁰ The Innocence Project, *supra* note 1.

¹¹ Only New Hampshire's statute cap is lower, providing a maximum of \$20,000 for the entirety of the wrongful conviction. N.H. REV. STAT. ANN. § 541-B:14.; For a comparison of compensation rates of other states, see Appendix B.

¹² No maximum amount is specified. See 2001 Al. Pub. Act 659; D.C. CODE §2-421 (2008).

¹³ "[I]t shall award damages in such sum of money as the court determines will fairly and reasonably compensate him." W. VA. CODE § 14-2-13a (2008). See also N.Y. CT. CL. Act §8-b (2008).

¹⁴ LA. REV. STAT. § 15:572.8; FL. H.B. 1025 (2008). Maine has a cap of \$300,000. 14 ME. REV. STAT. ANN. tit. 14, § 8241 (2008). Massachusetts has their cap set at \$500,000. MASS. GEN. LAWS. CH. 258 § 5 (2008). North Carolina's cap is \$750,000. N.C. GEN. STAT. § 148-82 (2008). Tennessee's cap is \$1,000,000. TENN. CODE ANN. § 9-8-108.

¹⁵ 2008 Ut. Ch. 358; N.J. STAT. ANN. § 52:4C-5 (2008).

¹⁶ 2008 Ut. Ch. 358.

fairly and reasonably compensate him,” enabling the amount of compensation to fluctuate based on the individual’s particular situation.¹⁷

In addition, several states have created alternative compensation remedies for the wrongfully convicted. For example, Texas also provides lost wages as well as any unpaid child support plus interest.¹⁸ Louisiana and Tennessee automatically grant survivor benefits on awarded compensation, thus making any unpaid compensation part of the exoneree’s estate.¹⁹ California declares that compensation awarded is not to be considered income for tax purposes.²⁰ These provisions further allow exonerees to avoid the economic burdens that resulted from their wrongful convictions.

Many states require individuals who seek compensation under a state statute to offset damages awarded in a civil suit from the amount awarded under a compensation statute.²¹ Offsetting the damages preserves the exoneree’s right to bring suit against the state and does not result in a windfall because damages awarded by the court are deducted from the compensation awarded under a statute.

B. Wisconsin must adequately authorize compensation for attorney fees and all other fees associated with the wrongful conviction.

Wisconsin’s statute should be clarified so that it fully compensates the wrongfully convicted for all fees incurred that are associated with the wrongful conviction. The statute should explicitly authorize the award of all reasonable attorney fees associated with the individual’s original trial and any later proceedings related to the charge, as well as any other costs associated with the defense, such as DNA testing or investigator fees, and reasonable costs incurred while pursuing compensation.²²

Other states’ statutes are unambiguous regarding reimbursement for attorney fees. Compensation statutes in six states currently provide clear entitlement to awards for attorney’s fees incurred by the defendant during litigation related to the charge: Illinois, Iowa, New Jersey, Ohio, Texas, and Vermont.²³

¹⁷ N.Y. CT C ACT § 8-b (2008).

¹⁸ TEX. CODE ANN. § 103.001 (2007).

¹⁹ LA. REV. STAT. § 15:572.8(N)(3); TENN. CODE ANN. § 9-8-108(E)(i)(c).

²⁰ CAL. PENAL CODE § 4904.

²¹ See 2008 FL H.B. 1025; MASS. GEN. LAWS. CH. 258 § 4; MO. ANN. STAT. § 650.058(4); 2008 Ut. Ch. 358; VT. STAT. TIT. 13. § 5574; 2004 VA. S.B. 271.

²² It should be noted that authorizing the Claims Board to award attorney’s fees and other costs associated with the proceeding will not drain the state’s resources. The vast majority of exonerees initially received representation by a state public defender due to their indigence; thus, reimbursement for attorney’s fees will be minimal.

Wisconsin's statute currently authorizes the Claims Board to award attorney fees,²⁴ but it is unclear in the statutory language whether the wrongfully convicted individual can receive reimbursement for all attorney fees incurred throughout the proceedings related to the conviction and charge, including postconviction relief. In fact, one member of the Claims Board, presently alone in this minority view, believes that attorney's fees are not to be awarded in excess of the miniscule \$25,000 cap—that instead the fees are included in that award.²⁵ Thus, the statute should be amended to remove any ambiguity.

In addition to awarding attorney fees, Wisconsin should also go beyond what other states offer, and reimburse exonerees for all fees associated with the wrongful conviction. These fees include, but are not limited to, the court costs associated with the trial and any postconviction relief, work release fees, any penalty or jail surcharges assessed by the court, public defender fees, fees paid to the victim-witness compensation fund, fees paid for court-ordered restitution, fees assessed under the crime law and drug law enforcement surcharge, and fees paid for DNA analysis.²⁶ Securing the return of these fees paid to the state is notoriously difficult. There is no statutorily defined process and, as a result, the wrongfully convicted individual must not only calculate all of the fees paid, but must individually petition each institutional entity for a refund.

In one recent case involving a former Wisconsin Innocence Project client, these fees totaled at least \$2,225, yet securing their partial return required numerous letters and discussions with administrators. David Sanders would have also received this amount or more, providing him with at least some financial relief upon his release. But because there is no clear right or process for the return of such fees, Sanders never received a refund of those sums.

Providing for the automatic return of these fees as part of a compensation award relieves the wrongfully convicted individual from undergoing this burdensome process on his or her own. Moreover, returning these fees will not amount to a huge imposition on the state's budget because the number of individuals who would qualify for these fees costs is small.²⁷

²³ 705 ILL. COMP. STAT. 505/8; IOWA CODE § 663A.1; N.J. STAT. ANN. § 52:4C-1; OHIO REV. CODE ANN. § 2743.49; TEX. CODE ANN. § 103.001; VT. STAT. TIT. 13. § 5574 (2007).

²⁴ The statute currently states, "Compensation awarded by the claims board shall include any amount to which the board finds the petitioner is entitled for attorney fees, costs and disbursements." WIS. STAT. § 775.03(4).

²⁵ David Sanders Claims Board Decision (Hunter, dissenting), Jan. 24, 2008, *available at* <http://claimsboard.wi.gov/docview.asp?docid=13153&locid=28>.

²⁶ Wis. Stat. Chapter 814 sets out the court costs and fees that can be levied against defendants. The Wisconsin Circuit Court has created a useful guide to the statutory fines, *available at* <http://www.wicourts.gov/about/filing/docs/fees.pdf>. The table lists the relevant statute for each potential fee, notes the percentage or amount that can be assessed, and describes the circumstances in which the fee applies.

²⁷ Unfortunately, we do not have the data for the number of individuals in Wisconsin who would benefit from this statutory change. We do not anticipate, however, that the numbers would be particularly large because it is extremely rare for a conviction to be overturned or vacated. The courts have a strong interest in finality, and reverse convictions very infrequently. *See, e.g., State v. Escalona-Naranjo*, 185 Wis. 2d 169, 517 N.W.2d 157 (1994) (discussing the state's interest in the finality of convictions). As a measure of the infrequency of reversal, the

C. The compensation statute should provide essential non-monetary compensation to the wrongfully convicted.

Ironically and inexcusably, Wisconsin provides more support to guilty individuals after release than to exonerated wrongly convicted individuals. Wisconsin should follow the lead of other states and the national trend toward offering the wrongly convicted healthcare and counseling services, assistance finding housing, and educational and vocational support, to ensure that they have been provided ample opportunities for successful reintegration into society.

First, the exoneree's county of residence should provide an up-to-date list or directory of resources in the community that are likely to be available the day he or she leaves prison. This list may include information about temporary housing and emergency shelters, food banks, healthcare services, etc. Second, the county should provide a case manager to the exoneree to identify and administer the services of the county. The case manager should provide one-on-one assistance to help the exoneree obtain food and clothing, secure long-term housing, and access job training and job placement services. The case manager should assist with applying for any benefit programs the individual may be eligible for, such as FoodShare and BadgerCare. If needed, the case manager also should connect the individual to community or faith-based organizations that provide mentoring opportunities and other supports.

Currently, Wisconsin's compensation statute does not offer non-monetary support to the wrongfully convicted. But other states recognize and address the fact that exonerees need more than just monetary compensation. For example, Texas provides one year of counseling services to each wrongfully convicted individual.²⁸ Louisiana compensates exonerees by providing three years of medical and counseling services.²⁹ Vermont's statute surpasses both by giving exonerees ten years of state health care coverage.³⁰

Other states offer the wrongfully convicted access to education. Florida and Texas offer a waiver for 120 hours of instruction at any career center, community college, or state university, while Massachusetts offers a fifty percent tuition discount at community colleges and universities.³¹ In Virginia, exonerees are reimbursed up to \$10,000 of tuition for career and technical training within the state community college system, contingent upon successful completion of the program.³² Louisiana's compensation statute even covers the tuition and fees at any community college or public university in the state and the cost of one year of job-skills training for exonerees.³³

Wisconsin Innocence Project has only seen 12 Wisconsin clients' convictions reversed or vacated in the last 12 years.

²⁸ TEX. CODE ANN. § 103.001

²⁹ LA. REV. STAT. § 15:572.8.

³⁰ VT. STAT. TIT. 13. § 5574.

³¹ FL. H.B. 1025; H.B. 1736, 81st Leg., Sess. 81-R (Tex. 2009); MASS. GEN. LAWS. CH. 258 § 5.

³² 2004 Va. Ch. 818.

Wisconsin should provide similar support for exonerees. At the very least, Wisconsin should provide the wrongfully convicted with the same services available to parolees and people on extended supervision. These services should include, but not be limited to, employment assistance, housing assistance, counseling services, and other such services. Offering these services will not overburden the state because the number of individuals who would qualify for these additional services will be small, and because the infrastructure already exists to provide these services.

D. Wisconsin should provide a mechanism that allows wrongfully convicted individuals to expunge their criminal records.

Given that a criminal record drastically affects access to housing and employment,³⁴ Wisconsin's current law is inadequate because it does not provide any mechanism for expunging the records of those who were wrongfully convicted. In Wisconsin, only a person under age 21 who was found guilty of a misdemeanor is eligible for record expunction.³⁵ The current statute does not provide for expunction in cases of municipal ordinance violations, state civil forfeitures, or felonies. Even if an individual is judged innocent by both a judge and a prosecutor, and proves his innocence by clear and convincing evidence in the Claims Board, that individual has no statutorily prescribed way to expunge the criminal record.

The inability to expunge a criminal record is especially unfair to the wrongfully convicted, whose involuntary contact with the criminal justice system continues to harm their lives long after the exoneration. In fact, studies indicate that mere contact with the criminal justice system severely limits subsequent employment opportunities. According to one recent study conducted in Milwaukee, individuals who have a criminal record are only one-half to one-third as likely as otherwise identically qualified individuals to be considered for employment.³⁶ A criminal record not only limits where an exoneree can find employment, it also severely limits where he may hang his hat. In most Wisconsin communities, private landlords are given broad discretion to discriminate against those with criminal records so long as their policy is consistent and not based on other prohibited factors such as race or religion.³⁷

³³ LA. REV. STAT. § 15:572.9.

³⁴ See Catherine Anderson, Am. Bar Ass'n Section of Criminal Justice, Report to the House of Delegates, Feb. 2005, at 9, available at <http://www.abanet.org/crimjust/policy/my05108a.pdf>.

³⁵ WIS. STAT. § 973.015 (2008).

³⁶ Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. OF SOC. 937 (2003), available at <http://www.northwestern.edu/ipr/publications/papers/2003/pagerajs.pdf>. Exonerees are unique in that their criminal records do indicate that their convictions have been vacated or reversed. Unfortunately, many employers do not understand the information on CCAP, or continue to view the individual negatively despite the presumption of innocence, as occurred when Evan Zimmerman sought the janitorial position. Moreover, as noted below, data sold to private vendors, which employers use to conduct background checks, often do not have updated information.

³⁷ No Second Chance: People with Criminal Records Denied Access to Public Housing, HUMAN RIGHTS WATCH, 2004 at 11, available at <http://www.hrw.org/reports/2004/usa1104/usa1104.pdf>.

These problems are magnified by the development of Wisconsin's Circuit Court Access web site, the Consolidated Court Automation Programs (CCAP), which is available to anyone with access to the Internet. As the Supreme Court Office of Operations has noted, "[a]utomated records no longer have the 'practical obscurity' that insulates paper records, where the difficulty of use creates greater effective privacy."³⁸ As a result, the consequences of a criminal record continue to haunt innocent individuals.

Moreover, the rise of private data vendors who sell credit and background reports to employers and the general public has meant that merely sealing the record or removing it from CCAP does not fully expunge the record. These vendors sell records across state lines, and yet no law requires private vendors to update conviction information.³⁹ As a result, convictions that have been reversed or vacated, and even expunged, continue to appear in background checks conducted by employers through these third-party vendors, further harming the wrongfully convicted.

Recognizing these barriers that exonerees face and the problems created by electronic record-keeping, many states have begun reforming their expungement laws, providing automatic sealing of court records for those whose convictions are overturned.⁴⁰ In addition, some states now "immunize" exonerees who do not disclose their past convictions from employment discrimination based on failure to disclose their wrongful convictions.⁴¹ Finally, some states have authorized the court to issue a certificate of innocence, either at the time of reversal⁴² or after filing a petition to the court,⁴³ allowing the wrongfully convicted individual to mitigate the effects of out-of-date records on file with private data vendors.

Wisconsin should provide an efficient mechanism to help exonerees achieve expungement of their criminal records. First, individuals whose convictions are reversed or vacated on grounds not inconsistent with innocence should have their corresponding court record immediately removed from the Wisconsin Circuit Court Access website (CCAP). Currently, legislation is pending in the Wisconsin State Assembly that prevents the entry of a criminal charge into CCAP until there is a finding of guilt in a criminal matter.⁴⁴ Automatic CCAP removal for an exoneree is consistent with but much narrower than the proposed legislation.

³⁸ Supreme Court Memorandum, Sealing & Expunging, at 6 (June 9, 2005) (citing *Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)).

³⁹ See Jessica R. Lonergan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 405, 437-39 (2007-08).

⁴⁰ See Mass. Gen. Laws Ann. Ch. 258D, § 7(A) (West Supp. 2007); MO. ANN. STAT. § 650.058(4) (West Supp. 2007).

⁴¹ See, e.g., MO. ANN. STAT. § 650.058(4) (West Supp. 2007).

⁴² See Karen Sloan, *Ill. Law School Poised to Help Wrongly Convicted on a Shorter Path to Pardon, Compensation*, NAT'L L.J., OCT. 15, 2008, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202425268194>.

⁴³ *Id.*

⁴⁴ Assem. B, 340 (Wis. 2009)

Second, Wisconsin should mandate the expungement of exonerees' criminal records when the individual successfully petitions for compensation. As opposed to the superficial removal of a conviction from CCAP, expungement requires the physical court documents pertaining to the exoneree's case sealed or destroyed. The authority to issue an expungement order should be included within the compensation proceedings, so that when the individual is awarded compensation through the state's process, he does not have to undergo an additional step in seeking to expunge the record. Should exonerated individuals choose not to seek compensation under Wis. Stat. § 775.05, they should still be eligible for expungement by motion to the circuit court.

II. To aid with the difficult transition period between the reversal of conviction and complete compensation, Wisconsin should provide immediate compensation to all individuals whose convictions are reversed or vacated on grounds not inconsistent with innocence by immediately providing necessary support services, ordering the return of all fines, costs, and surcharges imposed, and providing immediate transitional monetary assistance.

Wisconsin should provide individuals who are more likely than not innocent with a monetary award even before they petition the Claims Board for compensation so that they can receive necessary immediate assistance upon their release from custody after a reversal of conviction. The current Wisconsin statute fails to offer wrongfully convicted individuals any immediate assistance in the interim period between reversal of the conviction and the State Claims Board compensation hearing. Although those who can prove their innocence may eventually qualify for monetary compensation, the compensation does not come at a time when they need it most. Nor does it provide for those who cannot prove innocence by clear and convincing evidence.⁴⁵ David Sanders, for example, did not receive compensation until over six months after he filed his compensation claim—years after his conviction was vacated—forcing him to file for bankruptcy.

To begin, all individuals whose convictions are reversed or vacated on grounds not inconsistent with innocence should also immediately receive all services provided to parolees and people on Extended Supervision. As discussed previously, non-monetary services such as counseling, healthcare, and housing assistance can be as important, if not more so, as monetary assistance. In addition, the law should provide that, upon reversal of conviction, all fines, fees, costs, and surcharges imposed as a result of the conviction should be automatically and promptly returned to the defendants.

As an additional intermediate measure, Wisconsin's statute should provide transitional assistance to wrongfully convicted individuals at the time of reversal. If the court were to find, at the time the conviction was vacated, that it is more likely than not that the defendant is innocent, or if the state were to stipulate to an individual's innocence, then the individual should promptly receive monetary compensation. At this intermediate stage, the court would make the determination, and then issue the interim transitional grant *within ten business days*. It is

⁴⁵ WIS. STAT. § 775.03(3).

important that since this is a discretionary finding by the judge, with little fact-finding involved, the resulting decision to grant or withhold immediate monetary compensation should not enter into the later decision to award or deny full compensation. However, the final compensation amount, once awarded, can be offset by any transitional assistance received.

Other states authorize the court to award immediate compensation. For example, Virginia statutorily implemented an immediate compensation scheme whereby those wrongfully convicted of a felony are provided an immediate monetary stipend or “transition assistance grant of \$15,000” when their convictions are reversed or vacated.⁴⁶ This award is then deducted from any additional award later received.⁴⁷ Illinois, which recently revised its compensation statute, authorizes the court to issue a certificate of innocence upon a showing of a preponderance of evidence that the defendant is innocent, which enables wrongfully convicted individuals to obtain speedy compensation at the discretion of the court.⁴⁸

Providing these services as well as transitional monetary compensation will not be a windfall for two reasons. First, only those individuals whose convictions are reversed or vacated on grounds not inconsistent with innocence will receive compensation. This is unlikely to be a significant number of individuals. Second, if the prosecutor decides to retry the individual, and the individual is re-convicted, the fines, costs, fees and surcharges can be reimposed and the transitional assistance provided to the individual can be ordered repaid. As a result, guilty individuals will not reap a windfall from this specific form of compensation.

III. The compensation procedure and burden of proof imposed by the current statute should be improved.

A. Wisconsin should adopt a preponderance of the evidence burden of proof for those seeking compensation, which is consistent with the standard required for other civil claims, and should allow compensation for individuals who were pressured to confess falsely or plead guilty or no contest to crimes they did not commit.

In all other civil claims brought before the state Claims Board, and in most other civil cases involving compensation and damages, the plaintiff or claimant is only required to prove his or her claim by a preponderance of the evidence.⁴⁹ Wisconsin should adopt this standard for compensation claims filed by the wrongfully convicted. There is no reason to treat wrongly imprisoned individuals any differently than any other kind of wronged or injured party.

⁴⁶ 2004 Va. Ch. 818; 2004 Va. SB 271. This money comes from the state’s criminal fund.

⁴⁷ *Id.*

⁴⁸ 705 ILL. COMP. STAT. 505/8 (2008). In Illinois, the decision to authorize judges to issue a certificate of innocence recognizes that judges are often already familiar with the facts of the case and can make an immediate determination. See Karen Sloan, *Ill. Law School Poised to Help Wrongly Convicted on a Short Path to Pardon, Compensation*, NAT’L L.J., Oct. 15, 2008, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202425268194>.

⁴⁹ See WIS. STAT. § 16.007(5) (indicating that the Claims Board should use the legal standard for the type of civil legal claim asserted, which is always a preponderance standard).

Wisconsin currently requires the Claims Board to determine that the individual is innocent by clear and convincing evidence.⁵⁰ By employing a higher standard for a compensation claim, which is essentially a civil claim,⁵¹ Wisconsin penalizes the wrongly convicted and unfairly makes it harder for them to receive compensation. Requiring an individual to prove his or her innocence by clear and convincing evidence means that many innocent individuals will not receive compensation for their wrongful imprisonment. In the absence of DNA verification, an innocent individual may not be able to conclusively prove innocence. This includes circumstances when a witness in the original trial recants his or her trial testimony, when the conviction was based on faulty forensic science, or when an eyewitness admits an error in identification.⁵² Requiring an individual to prove innocence by clear and convincing evidence severely and unfairly restricts innocent individuals from receiving full compensation.

Furthermore, Wisconsin law should be amended to permit innocent individuals who were pressured to confess falsely or enter a guilty or no contest plea to obtain compensation. Wisconsin's statute currently renders an individual ineligible for compensation if he or she contributed in any way to his or her wrongful conviction.⁵³ This means that innocent individuals who falsely confess for any reason, even police coercion, are ineligible to receive compensation under the current statute. Innocent individuals who pled guilty under duress or in order to avoid a more serious charge and sentence would also be ineligible under the current law. Under the current statute, someone like Chris Ochoa, a Texas exoneree represented by the Wisconsin Innocence Project who falsely confessed and pled guilty to a heinous crime under police coercion, would be denied compensation despite being proven innocent of the crime for which he served 12 years in prison, after DNA testing identified the true perpetrator. Given that false confessions may result from coercive police interrogations, including lies and threats as in Ochoa's case, excluding these individuals from receiving compensation is particularly unfair. Ochoa is not alone in falsely confessing: false confessions have been identified in at least fifteen percent of wrongful convictions, meaning Wisconsin's statute effectively excludes at least fifteen percent of exonerees.⁵⁴

B. Wisconsin should improve the procedure for filing a compensation claim.

Wisconsin should improve the process for receiving compensation to ease the burden on the wrongfully convicted. The Claims Board's practices also contribute to the long wait for receiving compensation. When a wrongfully convicted individual has filed another lawsuit

⁵⁰ WIS. STAT. § 775.05(3).

⁵¹ *Walden*, 547 N.E.2d at 967.

⁵² Mistaken eyewitness identification has been noted in 79% of wrongful convictions, faulty forensic science was used in 59% of wrongful convictions, and false informant testimony occurred in 18% of wrongful convictions. Brandon L. Garrett, *Judging Innocence*, 108 COLUMBIA L. R. 55, 60 (2008).

⁵³ WIS. STAT. § 775.05(4).

⁵⁴ This estimation assumes that Wisconsin's numbers compare to the nation's. Garrett, *supra* note 53, at 88.

against any entity, the Claims Board often will not consider a compensation claim until all other lawsuits have been settled, even though this requirement is not in the statute. Such a delay might make some sense if applied when a wrongfully convicted individual was suing the state and the statute allowed the Claims Board to deduct damages awarded by the court from damages to be awarded by the Board. But the Claims Board has delayed a decision even where an individual was suing his former attorney, an individual completely unassociated with the state.⁵⁵ In addition, the current statute does not authorize the Claims Board to reduce compensation based on damages awarded in civil suits, so this delay does not make sense. Moreover, while the statute does not delineate a prosecutor's right to file a response to a Claims Board petition, in at least one case the Claims Board repeatedly delayed hearing a claim because it was waiting for the prosecution's response.⁵⁶ These practices add to the delays innocent people experience before they receive compensation. Four reforms should be adopted to redress these problems.

First, Wisconsin should facilitate the claims process by authorizing individuals seeking compensation to receive a public defender to assist them. This option should become available to the wrongfully convicted individual immediately after the individual's conviction is vacated or reversed, assuming the individual is not already privately represented. Having access to an attorney would greatly assist the wrongfully convicted in seeking the full compensation to which they are entitled.

Second, claims should ultimately be heard and decided before an Administrative Law Judge (ALJ) before the Division of Hearings and Appeals (DHA). Exonerees should still file a claim for compensation with the Claims Board. This claim should then immediately be forwarded by the administrative staff of the Claims Board to the Department of Administration-Division of Hearings and Appeals, utilizing the same procedure as the Division utilizes for hearings under the crime victim compensation program (Wis. Stat. § 949.11).⁵⁷ ALJ's already hold hearings on a regular basis for victim compensation as well as other government agency disputes. The Claims Board, by contrast, only meets several times a year. Therefore, the ALJ's are best suited for promptly determining compensation. It is our understanding that when fact-finding is necessary in certain cases, it is already the current practice to transfer cases from the Claims Board to administrative law judges. Therefore, this proposed process will not unduly burden the current system as the process already exists for other civil claims.

⁵⁵ Exoneree Frederic Saecker experienced a two-year delay while waiting for the completion of his suit against his trial attorney, as did Anthony Hicks, whose innocence was proved through DNA testing. See Shelley Fite, *Compensation for the Unjustly Imprisoned: A Model for Reform in Wisconsin*, 2005 WIS. L. REV. 1181, 1196-97 (2005).

⁵⁶ The prosecutor's failure to file a reply contributed to the delay in David Sanders's claim. See Dee J. Hall, *Aid Asked for Wrongfully Jailed Man; Compensation and Legals [sic] Fees Totaling \$23,000 Requested for Freed Teacher*, WIS. ST. J., Jan. 25, 2008.

⁵⁷ It is recognized that Wisconsin needs to implement many statutory changes to complete the compensation reform outlined in this proposal. Although Appendix C does not encompass all statutory changes, it reflects on some of the specific statutory changes needed to streamline compensation through the DHA. See *Appendix C*.

Third, to further ensure timely response, the Claims Board should not have the authority to delay sending claims to the DHA when another suit against the state, county, or municipality, is pending.⁵⁸ Instead, if a subsequent civil judgment is obtained, the state can be permitted to offset or recoup any compensation awarded through DHA, against the civil judgment. This provision renders a delay unnecessary.

Fourth, the ALJ should determine whether the claimant has proved his or her innocence by a preponderance of the evidence, and the amount of compensation he or she should be awarded. The ALJ should then inform the Claims Board of the claimant's ultimate award, which will be responsible for prompt disbursement of the award.

IV. The fiscal impact associated with an increase in compensation is minimal.

Although granting a transitional award at the time of conviction reversal and lowering the standard of proof to allow for the wrongfully convicted to receive compensation will have some budgetary impact, it is unlikely that it will have a significant impact because the number of exonerations is small. While there is no precise data on the number of individuals who would be eligible to receive compensation, data from the Wisconsin Innocence Project suggests that the numbers are low. In 12 years, the Wisconsin Innocence Project has obtained reversal of convictions for 12 individuals in Wisconsin.⁵⁹ Although the Wisconsin Innocence Project is not the only group representing innocent and wrongly convicted individuals in this state, this data suggests that, on average, perhaps one or two people a year would likely qualify for transitional assistance and compensation. Moreover, only ten individuals have actually received compensation from the Claims Board since 1966, and only thirty-three individuals have even applied for compensation in the last forty years. Even though the numbers may increase slightly since the preponderance standard is easier to meet than the current standard, it is unlikely that these numbers will increase significantly. As a result, it is unlikely that revising the statute to provide more adequate compensation for the wrongfully convicted will have any significant impact on the state's budget.

CONCLUSION

Legislatures around the country have recognized that states have a moral and practical obligation to compensate exonerees for unjustly denying their freedom and inflicting severe hardships. While Wisconsin was the first state to pass a compensation statute, Wisconsin has fallen behind in "making it right" for the wrongfully convicted. Wisconsin's current statute does not satisfactorily compensate the wrongfully convicted for their ordeal. Wisconsin must revise its statute to adequately compensate the wrongfully convicted and reestablish itself as a forerunner or at least an equal in compensating the wrongfully convicted.

To rectify the severe shortcomings of the current compensation system, Wisconsin should increase compensation amounts for those wrongfully convicted, authorize compensation for attorney's fees and other fees related to the wrongful conviction, offer non-monetary compensation in the form of support services, allow for the wrongfully convicted to get their

⁵⁹ In that time period the Wisconsin Innocence Project has also helped free two individuals in other states.

criminal records related to the wrongful convicted expunged, and streamline the compensation claim process.

To aid with the difficult transitional period between the reversal of conviction and complete compensation, Wisconsin should provide immediate compensation to all individuals whose convictions are reversed or vacated on grounds not inconsistent with innocence by immediately offering necessary support services and providing transitional monetary assistance.

Enacting these improvements to the current Wisconsin statute will not only serve to adequately compensate the wrongfully convicted, but will restore Wisconsin's position as a leader on issues of fairness and justice in the criminal justice system.

APPENDIX A

Wis. Stat. § 775.05 (2007)

775.05. Compensation for innocent convicts.

- (1) The claims board shall hear petitions for the relief of innocent persons who have been convicted of a crime.
- (2) Any person who is imprisoned as the result of his or her conviction for a crime in any court of this state, of which crime the person claims to be innocent, and who is released from imprisonment for that crime after March 13, 1980, may petition the claims board for compensation for such imprisonment. Upon receipt of the petition, the claims board shall transmit a copy thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced the petitioner for the conviction which is the subject of the claim, or their successors in office, for the information of these persons.
- (3) After hearing the evidence on the petition, the claims board shall find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the evidence is not clear and convincing that he or she was innocent.
- (4) If the claims board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the claims board shall find the amount which will equitably compensate the petitioner, not to exceed 25,000 and at a rate of compensation not greater than 5,000 per year for the imprisonment. Compensation awarded by the claims board shall include any amount to which the board finds the petitioner is entitled for attorney fees, costs and disbursements. If the claims board finds that the amount it is able to award is not an adequate compensation it shall submit a report specifying an amount which it considers adequate to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2).
- (5) The claims board shall keep a complete record of its proceedings in each case and of all the evidence. The findings and the award of the claims board shall be subject to review as provided in ch. 227,

APPENDIX B

Yearly Compensation for Wrongfully Convicted	
State	Compensation Per Year
Texas	\$80,000
Utah	\$55,974 ¹
Virginia	\$51,911 ²
Alabama	\$50,000
Florida	\$50,000
Mississippi	\$50,000
North Carolina	\$50,000
Federal	\$50,000 ³
Ohio	\$40,330 ⁴
California	\$36,500
Vermont	\$30,000
Nebraska	\$25,000
Iowa	\$50 per day + \$25,000 for lost wages
New Jersey	\$20,000
Missouri	\$18,250
Illinois	\$14,000 - \$17,070 ⁵
Louisiana	\$15,000
Wisconsin	\$5,000

¹Estimate based on the U.S. Census Bureau's 3-year average median income. Utah awards wrongfully convicted individuals the average annual nonagricultural payroll wage for each year of incarceration.

²Estimate based on the U.S. Census Bureau's 3-year average median income. Virginia awards wrongfully convicted individuals 90% of the state per capita personal income.

³Death row cases are awarded \$100,000 per year.

⁴In addition to \$40,330 for each year in prison, Ohio also awards lost wages, attorney fees, fines and court costs.

⁵Compensation determined by length of confinement. For example, individuals confined for 5 years of less are awarded up to \$85,350, and individuals confined for 14 years or more are awarded up to \$199,150.

Total Compensation for Wrongfully Convicted	
State	Total Compensation
Connecticut	No Limit
District of Columbia	No Limit
Maryland	No Limit
New York	No Limit
West Virginia	No Limit
California	No Limit
Missouri	No Limit
Florida	\$2 million
Virginia	\$1.1 million ¹
Tennessee	\$1 million
Utah	\$839,610 ²
North Carolina	\$750,000
Massachusetts	\$500,000
Mississippi	\$500,000
Nebraska	\$500,000
Maine	\$300,000
Illinois	\$199,150 ³
Oklahoma	\$175,000
Louisiana	\$150,000
Wisconsin	\$25,000
New Hampshire	\$20,000

¹Virginia awards wrongfully convicted individuals 90% of the state per capita personal income for up to 20 years.

²Utah awards wrongfully convicted individuals the average annual nonagricultural payroll wage for each year of incarceration for up to 15 years.

³Compensation determined by length of confinement.

APPENDIX C

Currently, the chapter that governs Administrative Actions, such as those heard by the Division of Hearings and Appeals, does *not* apply to proceedings of the Claims Board except where a claims applicant wants a decision by the claim's board reviewed, in which case the review is subject to the procedures of Administrative Actions under Chapter 227. (Wis. Stat. § 227.03(5)). Therefore, the following statutes would need to be amended:

- Wis. Stat. § 227.03(5): Should be changed so that the procedures of Chapter 227 do apply to the Compensation for Innocent Convicts statute, §775.05.
- Wis. Stat. § 775.05: The following changes should be made
 - (1) The claims board shall receive petitions for relief of innocent persons who have been convicted of a crime, and the Board itself or its administrative staff shall forward claims to the Division of Hearing and Appeals;
 - (2) A time limit for both the transmittal of the claim to the other parties and for the other parties to respond should be set;
 - (3) A Division of Hearings and Appeals Department of Justice Administrative Law Judge shall hear the evidence on the petition within an allotted time period, and should use a preponderance of the evidence standard of proof (not clear and convincing evidence);
 - (4) If the DHA Dept. of Justice ALJ finds the petitioner is innocent, regardless of whether he/she by his/her own act or failure to act contributed to bringing about the conviction and imprisonment, the ALJ shall submit such a finding and a recommendation for compensation to the claims board.
 - (5) The ALJ should keep a complete record of the proceedings in accordance with the other requirements for Chapter 227 to provide an opportunity for the findings and away of the ALJ and Claims Board to be subject to review as provided in Chapter 227.

Grant, Peter

09-4779
+ PJH
+ PG

From: Hurley, Peggy
Sent: Wednesday, July 28, 2010 10:11 PM
To: Grant, Peter
Subject: FW: Clarification on Wrongful Conviction Compensation Legislation

-----Original Message-----

From: Conklin, Melanie
Sent: Wed 7/28/2010 4:22 PM
To: Hurley, Peggy
Subject: Clarification on Wrongful Conviction Compensation Legislation

Hi Peggy -

I just left you a convoluted voice mail because you're gone the rest of the week and then I'm out the following two weeks. Here is what our conversations on the DOA Hearings and Appeals Division have involved. I hope this is what you are looking for. If not, we can certainly talk again when we are both back.

On your question about how the proposed procedure of using Administrative Law Judges within the Division of Hearings and Appeals relates to the existing procedures for obtaining compensation.

Currently, exonerees have to file a claim through the Claims Board, which then has a hearing to determine whether the exoneree has proven his innocence, and then awards a certain amount of compensation.

Under the proposed changes, exonerees would still file claims through the Claims Board, but then the Claims Board would immediately transfer the case to the Division of Hearings and Appeals so that an Administrative Law Judge can determine whether and what amount of compensation is due. This would occur for all claims.

Thanks so much for your work on this.

My best,

Melanie

Melanie Conklin

Office of Rep. Mark Pocan

608.266-8570

melanie.conklin@legis.wi.gov

125W
Hurley, Peggy

From: Hurley, Peggy
Sent: Tuesday, October 26, 2010 12:33 PM
To: Conklin, Melanie
Cc: Wavrunek, Glenn
Subject: RE: Exonerees

That sounds just fine. I realize my email was a bit rambling . . . I think much of the difficulty I'm having centers around providing services, representation, and funds to people based solely on a reversed or vacated conviction. From the materials you provided, it seems that not every person whose conviction is reversed is a true "exoneree." On the other hand, if the services, representation, and funds were tied into the actual compensation-seeking process, I think it would be simpler and easier, but that would lead to delays AND it would make a lot of things depend upon the hearing examiner's determination of whether the person is entitled to compensation. So, I'm not really sure how you want to proceed, given those two competing concerns.

In any event, please have Glenn give me a call or write an email. If he'd prefer, we could meet in person, too. Thanks!

Peggy

From: Conklin, Melanie
Sent: Tuesday, October 26, 2010 12:29 PM
To: Hurley, Peggy
Cc: Wavrunek, Glenn
Subject: RE: Exonerees

Hello Peggy,

So the bill has made its way full circle back to you! As you know this has been a huge project for Glenn and we're at the point now where he will be back in the office in just over a week. So I'll share this with him – see what I can also do to help – and he will get back to you. Given the season and staffing levels here . . . will that timing work okay for you?

He is checking this email from time to time, so I'll copy Glenn here too so we can stay on top of this in November.

Thank you!
Melanie

From: Hurley, Peggy
Sent: Monday, October 25, 2010 12:30 PM
To: Conklin, Melanie
Subject: Exonerees

Hi Melanie,

I hope you and yours are well. The requested bill on services/compensation/justice for exonerees has made its way back to my desk, and I have a few questions before I can draft my portions of the bill.

With regard to criminal record expungement and removal from CCAP, your request sheet states that if a conviction is reversed on grounds "not inconsistent with innocence," all records related to the conviction should automatically be removed from CCAP and the person should be entitled to expungement of his or her record related to the conviction.

12/6/2010

How is it determined if a conviction is reversed on grounds not inconsistent with innocence? If you are seeking automatic removal of the record from CCAP, it seems to me that someone will have to determine that a reversal was not inconsistent with innocence. There will be some cases, I can imagine, that would be muddy: for example, if a conviction is reversed because wrongfully seized evidence is admitted to evidence, or because a court of appeals determines that a defendant had not been properly Mirandized before he or she confessed to a crime, would you want those convictions to be removed from CCAP? Would you like the matter to be decided by the circuit court judge, upon a motion from the exoneree? If you would want every reversed conviction to be automatically removed from CCAP, should I ignore the "not inconsistent with innocence" language?

Similarly, if as a result of, say, a reversal based on improperly seized evidence, the DA decides not to retry the case and charges are dismissed, would you want the circuit court to automatically grant expungement upon a motion from the exoneree or would you want there to be a finding of fact by either the circuit court or the hearing examiner that expungement is appropriate because the reversal is consistent with innocence? Either way, I think a hearing or least an order based upon a motion by the exoneree would be necessary. Do you agree?

Also, would you want the records removed from CCAP upon reversal of a conviction, even if the state is appealing that reversal? Or would you want to wait until all appeals are exhausted? I think the same question applies to motions for expungement.

The same question applies to the proposed transitional assistance financial grant. It appears that your intent is to give a transitional assistance financial grant to exonerees within 10 days of the order of reversal of their conviction. If a reversal is reversed, what happens to that grant? The request sheet also contains language that suggests that the circuit court would determine whether a person whose conviction was reversed is likely an innocent person and entitled to transitional assistance. If you want this to occur, would it be upon a motion by the exoneree? If a person chooses not to pursue a compensation claim, or if the compensation claim is denied, would the person have to repay the transitional assistance?

With regard to public defender assistance for compensation claims, my understanding is that you want to provide public defender representation for indigent persons who wish to pursue a compensation claim. Is that correct? The request states that public defender representation should be made available "immediately" after reversal or vacation of the person's conviction, but I am not sure how the public defender's office would be able to identify potential clients for these claims. Do you want to allow exonerees to petition the circuit court for appointment of a public defender? Do you want the same income guidelines to apply to exoneree's compensation claims as apply for public defender representation in the circuit court? Do you want to allow the public defender the option to file something akin to a "no merit" brief under any circumstances?

I may have more questions as we go along, but I think is enough for now! I look forward to discussing these matters with you.

Peggy Hurley
Legislative Reference Bureau
608 266 8906

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0066/1dn
JTK.....

Representative Pocan:

1. This draft provides that the act resulting from enactment of the draft applies initially to persons who are released from imprisonment for crimes of which they claim to be innocent on the day the act becomes law. If you would prefer a different initial applicability, please let me know.
2. You may wish to address the situation not covered by current law in which a person is imprisoned for more than one offense and is found to be innocent of one or more, but not all, of the offenses for which he or she was imprisoned.
3. You may wish to specifically address the situations, not addressed by current law, in which the claimant is given an award that the claimant believes is insufficient or that the claims board believes is incorrect or excessive and the claimant or the board wishes to contest some of the findings upon which the award is based or the correctness of the determination of the division of hearings and appeals.
4. Proposed s. 775.05 (4r) specifies that in hearings conducted by the division of hearings and appeals, the petitioner may be represented by counsel of his or her own choosing and DOA shall represent the state. An alternative would be to have DOC or DOJ represent the state. Please let me know if you would like to see this issue treated differently.
5. The instructions specify that there should be a time limit for transmittal of a newly filed claim to the other parties. Currently, the draft envisions only two parties to each case--the petitioner and DOA. If other entities are to be made parties or permitted to intervene, the draft needs to be changed. Currently, the prosecutor who prosecuted the petitioner and the judge who sentenced the petitioner, or their successors in office, must receive notice of any claim under s. 775.05 (2), stats. The draft specifies that DOA shall provide this notice within 5 days after the filing of the petition. If you prefer a different time limit, please let me know.
6. The instructions also specify that there should be time limits for briefs and issuance of decisions. The draft specifies, in proposed s. 775.05 (4r), that the petitioner may submit a brief no later than 30 days after the filing of a petition and DOA may reply no later than 30 days after the date of filing of the petitioner's brief. The draft further provides that the hearing shall be held no later than 30 days after the date that the

petition is filed or the last brief is filed, whichever is later, and the hearing examiner must issue his or her decision no later than 60 days after the date that the hearing is held. If you prefer different time limits, please let me know.

7. Under this draft, expenses incurred by the division of hearings and appeals in deciding claims resulting from alleged wrongful imprisonment are paid from state general purpose revenue. Currently, the division's expenses are generally charged to the state agencies in which the cases heard by the division arise. If you want to see this issue treated differently, please let me know. If you concur with this alternative, you may need to include funding in the draft to ensure its implementation. This is because the current appropriation that finances the operations of the division of hearings and appeals [s. 20.505 (4) (d), stats.] is a sum certain and the current funding level does not include the cost of the administering the program created by this draft.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Glen @ Pocan

Federal poverty level

amt of stipend from? to ensure

150% of federal poverty level

new approp? or repurpose claims & d
appropriation?

- 3 mos for now

- leave out approp for now } done there

266
872

6

mtg

by person at order's release
 when
 ct shall order if
 reversal not necessary
 if innocence

1. Upon request, DOC to put together a "release plan" to help transition

2. For the \$ award, ct shall order if not inconsistent w/ ^{innocence} ~~release~~, \$ to be given w/in 10 days of release

If ^{convicted} reinstated or if retried & convicted on same ~~times~~ charges, person has to pay back. Will get some \$s to me.

could be reversed, set aside, or vacated

3. Expungement = sealed records,
not ~~destroyed~~ records

Maybe just say records are
sealed - no, just ^{define} expungement as sealing

(4) CCAP: ^{upon petition} after conviction is ^{rev'd, or} set aside, ^{and} vacated and
if charges are dismissed
or def is acquitted of those
charges, it shall order removal
from CCAP if not inconsistent
w/ innocence.

5. Public defenders: shall appt counsel
for 775 hearings

6. Make sure there's no double-dipping
no suing the state AND 775 hrgs.

2009 BILL

C-CAP
related
draft

- 1 **AN ACT to create** 758.20 of the statutes; **relating to:** the Consolidated Court
2 Automation Programs.

Analysis by the Legislative Reference Bureau

Under current law, the director of state courts established a consolidated electronic system. This system, known as the Consolidated Court Automation Programs (CCAP), contains information about civil and criminal cases filed in the circuit courts in this state, including information about the parties and their attorneys; documents filed; and deadlines, decisions, and outcomes of cases. CCAP also contains information on family court proceedings; probate proceedings; John Doe proceedings; reviews of certain administrative proceedings; tax warrants; mechanics', construction, condominium, or other types of liens; civil lawsuits; eviction proceedings; and domestic violence and other restraining orders and injunctions.

The information on CCAP is available in an Internet Web site. The Web site has no limitations on who has access to the information, although information in certain types of cases is not available to the public. CCAP allows a user to search for all civil and criminal cases in which a person or entity, who is the subject of the search, has been a party.

Currently, the initial CCAP Web page for each criminal and traffic or other civil forfeiture case contains the following statements: 1) for each criminal and traffic or other civil forfeiture case, a statement that employers may not discriminate against persons because of arrest and conviction records, except in certain circumstances; 2) for each criminal and traffic or other civil forfeiture case that did not result in a

BILL

conviction or forfeiture, a statement that the charges were not proven and have no legal effect, and that the defendant is presumed innocent; and 3) for each traffic or other civil forfeiture case in which a forfeiture but no criminal conviction was imposed, a statement that the charge or charges in the case are not criminal offenses.

Under this bill, the director of state courts may only provide case information on CCAP after a court does one of the following: 1) makes a finding that a person is guilty of a criminal charge; 2) makes a finding that a person is liable in a civil matter; 3) orders a person to be evicted; or 4) issues a restraining order or an injunction against a person.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 758.20 of the statutes is created to read:

758.20 Consolidated court automation programs. (1) In this section,

“Wisconsin Circuit Court Access Internet Web site” means the Web site of the consolidated court automation programs, which is the statewide electronic circuit court case management system established under s. 758.19 (4) and maintained by the director of state courts, that provides information regarding the cases heard in the circuit courts.

(2) The director of state courts may not include in the Wisconsin Circuit Court Access Internet Web site any information about any case or charge until a court does one of the following:

(a) Enters a finding of guilt in a criminal matter.

(b) Enters a finding of liability in a civil matter.

(c) Enters an order of eviction.

(d) Issues a restraining order or an injunction against a person.

(END)



PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

- 1 **AN ACT** *to create* 758.20 of the statutes; **relating to:** removing information from
2 the Consolidated Court Automation Programs.

Analysis by the Legislative Reference Bureau

Under current law, the director of state courts established a consolidated electronic system. This system, known as the Consolidated Court Automation Programs (CCAP), contains information about civil and criminal cases filed in the circuit courts in this state, including information about the parties and their attorneys; documents filed; and deadlines, decisions, and outcomes of cases. CCAP also contains information on family court proceedings; probate proceedings; John Doe proceedings; reviews of certain administrative proceedings; tax warrants; mechanics', construction, condominium, or other types of liens; civil lawsuits; eviction proceedings; and domestic violence and other restraining orders and injunctions.

Currently, the initial CCAP Web page for each criminal and traffic or other civil forfeiture case contains the following statements: 1) for each criminal and traffic or other civil forfeiture case, a statement that employers may not discriminate against persons because of arrest and conviction records, except in certain circumstances; 2) for each criminal and traffic or other civil forfeiture case that did not result in a conviction or forfeiture, a statement that the charges were not proven and have no legal effect, and that the defendant is presumed innocent; and 3) for each traffic or other civil forfeiture case in which a forfeiture but no criminal conviction was imposed, a statement that the charge or charges in the case are not criminal offenses.

Under this bill, upon the written request of a person whose case information is currently available on CCAP, the director of state courts must remove any

information relating to a case that did not result in a finding of criminal guilt or civil liability, an order of eviction, or the issuance of a restraining order against the person.

The bill also requires the director of state courts to remove from CCAP information relating to a case or criminal charge if a finding or order is reopened, set aside, vacated, or overturned.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 758.20 of the statutes is created to read:

2 **758.20 Consolidated court automation programs.** (1) In this section,
3 “Wisconsin Circuit Court Access Internet Web site” means the Web site of the
4 consolidated court automation programs, which is the statewide electronic circuit
5 court case management system established under s. 758.19 (4) and maintained by
6 the director of state courts.

7 (2) A person may request, in writing, that the director of state courts remove
8 from the Wisconsin Circuit Court Access Internet Web site information relating to
9 a case or charge against the person. Upon receiving the request, the director of state
10 courts shall remove the information relating to any case or charge that did not result
11 in a finding of guilt against the person in a criminal matter, a finding of liability
12 against the person in a civil matter, an order of eviction against the person, or the
13 issuance of a restraining order or an injunction against the person.

14 (3) The director of state courts shall remove all information from the Wisconsin
15 Circuit Court Access Internet Web site relating to a case or a criminal charge if a
16 finding or order related to the case or criminal charge is reopened, vacated, set aside,
17 or overturned on appeal. If a new finding, judgment, or order is subsequently entered

1 in the case or criminal charge, the director of state courts may enter the information
2 into the Wisconsin Circuit Court Access Internet Web site.

3 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0066/P1
JTK&PJH.....

2 Lys

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

note
3-22-11
soon

Gen Cat

SAW

- 1 AN ACT ~~relating to~~; resolution of claims against the state for wrongful
2 imprisonment of innocent persons. *e*

Analysis by the Legislative Reference Bureau

Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her own act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This amount includes any expenses for attorney fees, costs and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate. *e*

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petition to the Division of Hearings and Appeals *in* of the Department of Administration. The bill allows the petitioner to be represented by a public defender. The division then appoints a hearing examiner to hear the petition, who

makes findings and issues a decision concerning whether the petitioner is entitled to compensation. The findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing). The petitioner need not show that he or she did not by his or her own act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation. If the hearing examiner's finding is in the affirmative, the examiner must award compensation to the petitioner in an amount that the examiner considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the limit on the amount of compensation is increased to a rate of \$50,000 per year and there is no limit on the total amount of an award. The \$50,000 limit is subject to annual adjustment based upon changes in the cost of living. In addition, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections (DOC), and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

The bill initially applies with respect to claims filed by persons ~~who are released from imprisonment for crimes of which they claim to be innocent on the day the bill becomes law.~~ *for crimes of which they claim to be innocent*

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LPS: Strike the period also

SECTION 1. 227.03 (5) of the statutes is amended to read:

227.03 (5) This chapter does not apply to proceedings of the claims board, except as provided in ss. ~~775.05 (5), 775.06 (7) and 775.11 (2), and except that~~ proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in s. 775.05.

History: 1985 a. 182; 1989 a. 31; 1991 a. 32, 295; 1993 a. 16, 263, 377; 1995 a. 27 ss. 6224 to 6226m, 9130 (4); 1995 a. 77, 227, 351; 1997 a. 3, 191, 237, 283; 1999 a. 82; 2003 a. 33; 2007 a. 1.

SECTION 2. 227.43 (1) (bw) of the statutes is created to read:

who are released on the day the bill becomes law from imprisonment for crimes of which they claim to be innocent

1 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
2 conducted under s. 775.05.

3 SECTION 3. 301.051 of the statutes is created to read:

4 **301.051 Wrongful conviction; transition plan.** Not more than 5 days after
5 a court issues an order for a plan requested by an inmate pursuant to 808.085 (1) (a),
6 the department shall create and implement a transition to release plan for the
7 inmate. The plan shall: do all of the following

8 (1) Provide the inmate with a written list of community resources available to
9 the inmate upon his or her release from prison, including temporary housing and
10 emergency shelters, food banks, education and job assistance, and health care
11 services in the county into which the inmate will be released. The department shall
12 maintain up to date lists with contact information for each county in the state.

13 (2) Provide the inmate with individual counseling with a person trained by the
14 department to assist inmates in the transition to release from prison.

15 SECTION 4. 775.05 (2) to (4) of the statutes are amended to read:

16 775.05 (2) Any person who is imprisoned as the result of his or her conviction
17 for a crime in any court of this state, of which crime the person claims to be innocent,
18 and who is released from imprisonment for that crime after March 13, 1980, may
19 petition the claims board for compensation for such imprisonment. Upon Within 5
20 days after receipt of the petition, the ~~claims board~~ ^{department of administration} shall transmit a copy thereof to
21 the prosecutor who prosecuted the petitioner and the judge who sentenced the
22 petitioner for the conviction which is the subject of the claim, or their successors in
23 office, for the information of these persons.

24 (3) ~~Upon receipt of the claim for compensation by a petitioner for wrongful~~
25 ~~imprisonment for a crime of which the petitioner claims to be innocent, the~~

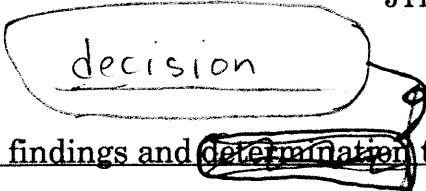
a petition under sub. (2)

SECTION 4

petition

department of administration shall promptly refer the claim to the division of hearings and appeals. The division shall hear the evidence on the petition. After hearing the evidence on the petition, the claims board, the division shall find either that the preponderance of evidence is clear and convincing demonstrates that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the preponderance of evidence is not clear and convincing does not demonstrate that he or she was innocent.

(4) If the ~~claims board~~ division of hearings and appeals finds that the preponderance of evidence demonstrates that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the claims board of the crime for which he or she was imprisoned, the division shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000 and at a rate of compensation not greater than \$5,000 \$50,000 per year or the amount determined under sub. (4m), whichever applies, for the imprisonment. Compensation awarded by the claims board In addition, the division shall include find any amount to which the board finds the petitioner is entitled for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The division shall subtract any moneys received by the petitioner under s. 808.085. If the claims board division finds that the amount it is able to award is not an adequate compensation it shall submit a report specifying an amount which it considers adequate to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2). Upon conclusion of the



decision

1 proceeding, the division shall transmit its findings and ~~determination~~ to the claims
2 board, which shall award the compensation specified in the decision and order
3 disbursement of the award to the petitioner from the appropriation under s. 20.505
4 (4) (d).

5 **SECTION 5.** 775.05 (4m) and (4r) of the statutes are created to read:

6 775.05 (4m) On April 1 of each year, the claims board shall adjust the
7 maximum amount specified in sub. (4) to reflect any changes in the U.S. consumer
8 price index for all urban consumers, U.S. city average, as determined by the U.S.
9 department of labor, for the 12-month period ending on the preceding December 31.
10 The board shall publish the adjusted amount so determined in the Wisconsin
11 administrative register.

12 (4r) At any hearing conducted under this section, the petitioner may be
13 represented by counsel of his or her own choosing. The department of administration
14 shall represent the interests of the state. The petitioner may submit a brief to the
15 hearing examiner no later than 30 days after the date of filing of the petition ^{with the claims board under sub. (2)} and the
16 department may reply no later than 30 days after the date of filing of the petitioner's
17 brief. The hearing shall be held no later than 30 days after the date that the petition
18 is filed ^{under sub. (2)} or the last brief is filed, whichever is later. The hearing examiner shall issue
19 a decision no later than 60 days after the date that the hearing is held.

20 **SECTION 6.** 775.05 (5) of the statutes is amended to read:

21 775.05 (5) The claims board shall keep a complete record of its the proceedings
22 in each case petition under this section and of all the evidence related to the petition.
23 The findings ^{and decision} of the division of hearings and appeals and the award of the claims
24 board shall be subject to review as provided in ch. 227.

SECTION 7. 808.085 of the statutes is created to read:

808.085 Wrongful conviction; relief. (1) If a court acts under s. 808.08 to release a person from confinement from a prison, the person may petition the court for any or all of the following:

(a) A court order directing the department of corrections to create and implement a transition to release plan.

(b) A financial assistance award not to exceed 150% of the federal poverty level for up to three months.

(c) Sealing of all records related to the case.

(2) The court shall, within 10 days after it receives the petition under sub. (1), grant the relief sought if the person's criminal conviction was reversed, set aside, or vacated for reasons not inconsistent with the person's innocence of the crime for which he or she was convicted.

(3) If a person who is granted relief under this section is subsequently convicted of the same charges for which he or she was granted relief, or if his or her conviction is reinstated, the person shall repay any award granted under sub. (2) (b) and all records related to the case shall be unsealed.

SECTION 8. 977.05 (4) (jr) of the statutes is created to read:

977.05 (4) (jr) At the request of a person determined by the state public defender to be indigent or upon referral of any court, represent the person in a hearing under s. 775.05.

SECTION 9. Initial applicability.

1 (1) This act first applies with respect to ~~claims~~ ^{petitions} filed by persons who are released
2 ~~from imprisonment for crimes of which they claim to be innocent~~ on the effective date
3 of this subsection. ~~from imprisonment for~~ ^{crimes of which they claim to be innocent}

4 (END)

d-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-00661dn
JTK&PJH.....

— date —

9
y's

LPS: please
change the
d-note slash
number to be: P1dn

Representative Pocan:

1. This draft provides that the act resulting from enactment of the draft applies initially to persons who are released ~~from imprisonment for crimes of which they claim to be innocent~~ on the day the act becomes law. If you would prefer a different initial applicability, please let me know.

from imprisonment for crimes of which they claim to be innocent

2. You may wish to address the situation not covered by current law in which a person is imprisoned for more than one offense and is found to be innocent of one or more, but not all, of the offenses for which he or she was imprisoned.

3. You may wish to specifically address the situations, not addressed by current law, in which the claimant is given an award that the claimant believes is insufficient or that the claims board believes is incorrect or excessive and the claimant or the board wishes to contest some of the findings upon which the award is based or the correctness of the determination of the division of hearings and appeals.

4. Proposed s. 775.05 (4r) specifies that in hearings conducted by the division of hearings and appeals, the petitioner may be represented by counsel of his or her own choosing and DOA shall represent the state. An alternative would be to have DOC or DOJ represent the state. Please let me know if you would like to see this issue treated differently.

5. The instructions specify that there should be a time limit for transmittal of a newly filed claim to the other parties. Currently, the draft envisions only two parties to each case—the petitioner and DOA. If other entities are to be made parties or permitted to intervene, the draft needs to be changed. Currently, the prosecutor who prosecuted the petitioner and the judge who sentenced the petitioner, or their successors in office, must receive notice of any claim under s. 775.05 (2), stats. The draft specifies that ~~DOA~~ shall provide this notice within 5 days after the filing of the petition. If you prefer a different time limit, please let me know.

Five

6. The instructions also specify that there should be time limits for briefs and issuance of decisions. The draft specifies, in proposed s. 775.05 (4r), that the petitioner may submit a brief no later than 30 days after the filing of a petition and DOA may reply no later than 30 days after the date of filing of the petitioner's brief. The draft further provides that the hearing shall be held no later than 30 days after the date that the

the
claims
board

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petition is filed or the last brief is filed, whichever is later, and the hearing examiner must issue his or her decision no later than 60 days after the date that the hearing is held. If you prefer different time limits, please let me know.

7. Under this draft, expenses incurred by the division of hearings and appeals in deciding claims resulting from alleged wrongful imprisonment are paid from state general purpose revenue. Currently, the division's expenses are generally charged to the state agencies in which the cases heard by the division arise. If you want to see this issue treated differently, please let me know. If you concur with this alternative, you may need to include funding in the draft to ensure its implementation. This is because the current appropriation that finances the operations of the division of hearings and appeals [s. 20.505 (4) (d), stats.] is a sum certain and the current funding level does not include the cost of the administering the program created by this draft.



Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Representative Pocan:

Please review this draft to ensure that it is consistent with your intent. Please let me know if you want changes to the three-month stipend that may be awarded under s. 808.085; my notes indicate that we had discussed, but not finally decided, how much money should be made available to exonerees.

Also, this draft does not specify whence the money for the stipend should come. We had discussed the possibility of funding the stipends from the appropriation under s. 20.505 (4) (d) or creating a new appropriation. Please let me know your thoughts on this for the next draft.

Please note that this draft requires the court, if requested, to seal all records related to an exonerated person's case. We had discussed the possibility of removing all references to the case from CCAP in addition to, or instead of, sealing the records. If you want me to add language related to CCAP, or replace the sealing requirement in the next draft, please let me know.

This draft requires the public defender to represent indigent people in s. 775.05 proceedings; please let me know if you also want state public defender representation for petitions under s. 808.085.

Peggy Hurley
Legislative Attorney
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0066/P1dn
JTK&PJH:cjs:jf

March 28, 2011

Representative Pocan:

1. This draft provides that the act resulting from enactment of the draft applies initially to persons who are released on the day the act becomes law from imprisonment for crimes of which they claim to be innocent. If you would prefer a different initial applicability, please let me know.
2. You may wish to address the situation not covered by current law in which a person is imprisoned for more than one offense and is found to be innocent of one or more, but not all, of the offenses for which he or she was imprisoned.
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Peggy Hurley
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mtg 4-15-11 re: 0066/P1

✓ add in that DOC should set up mtg w/ a county caseworker

301.05(3) make an appt for the person to meet w/ city rep (caseworker) not later than 2 wks after date of release. (15 days)

✓ up to 18 mos or as long as ~~3~~ months, if appeal 775.05 is pending, whichever is shorter.

✓ Sect 8 change to include ~~808~~ 808.085 hearings

✓ Initial App: JTK's changes first apply to anyone released on or after 1-1-10

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

①

✓ pb, line 8, seal records except
make ~~available~~ to person

✓ see home or
expunge, defining expungement as
keeping records off of cap &
accessible records

(— they will get suggested
language to me.)

✓ add ~~stands~~ under 808.085 to
purpose of appropriation in
20.505 (4)(d)

✓ 133% of gov. level stipend

✓ may send language stating this doesn't
apply to aid eligibility.